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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Tessier-Lavigne et al.

Group Art Unit: 1631

Serial No. 09/273,098

FAX RECEIVED

AUG 28 2001

Filed: March 19, 1999

Attorney Docket No. UC99-244-2

PETITIONS OFFICE

For: *Compositions for Promoting Nerve
Regeneration*

CERTIFICATE OF TRANSMISSION

I hereby certify that this corr. is being transmitted by fax to the Comm
for Patents at (703) 308-6916 on August 28, 2001

Signed

Rebecca Graff

PETITION TO RESCIND GROUP DIRECTOR'S DECISIONCommissioner for Patents
Washington, D.C. 20231

Dear Commissioner:

On May 25, 2001, I was notified that our Request to Charge Deposit Account mailed Feb 5, 2001 was denied. On the same day, I petitioned the Commissioner to exercise his authority to review and reconsider a decision of the Group Director. Surprisingly, our petition was treated as a request for the Group Director to reconsider his decision, and not surprisingly, he affirmed his decision denying our petition on Aug 22, 2001. I again petition the Commissioner to rescind the Director's decision.

Our subject Response, bearing a certificate of mailing dated Sept 5, 2000 was mailed in compliance with 37CFR1.8(a)(i). In particular, the person signing the certificate of mailing (I, the undersigned) had a reasonable basis to expect that the correspondence would be mailed on the date indicated. A subsequent investigation by me indicated that the correspondence was deposited on Sept 6, 2000. Our Request properly used the word "probably" because the Sept 6 mail date was not based on my first-hand witnessing of the event, but logically deduced from interviews and reviews of phone and mailing records that occurred five months later. In other words, with hindsight, I have a reasonable basis to believe that the Response was in fact mailed on Sept 6, 2000.

Under these facts, I believe the subject Response is properly afforded a Sept 6, 2000 mailing date; or in any event, the actual date of receipt by the Office (Sept 12, 2000, according to our postcard receipt). In either case, I included with our subject Response a petition for *any necessary extension* of time pursuant to 37 CFR 1.136(a) and authorized the Commissioner to

charge any fees to our Deposit Account No. 19-0750. At the time the Response was received by the Office, neither I nor the Office had any reason to believe that more than one month extension was necessary, and according to my records, the Office charged a one month extension (small entity) to our deposit account on Sept 25, 2000. It was not until Jan 30, 2001 that I first had any reason to doubt the Sept 5, 2000 mailing date and I promptly notified the Office on Feb 5, 2001 with the referenced Request.

Where an Applicant in good faith suggests a particular extension fee, yet authorizes the Commissioner to charge any necessary extension fee, and the Office relies on the particularly suggested fee, and the Applicant later informs the Office that the suggested fee, while suggested in good faith, was insufficient, the Office retroactively charges the sufficient fee. This is true whether the fee deficiency resulted from an insufficient check, an inaccurate small entity status, or an inaccurate certificate of mailing. Accordingly, I believe the Commissioner should properly charge our deposit account the difference between the one month extension fee charged and the necessary two month extension fee, as requested in our referenced Request.

I believe that the policy advocated by the Director in his Decision dated Aug 22, 2001 is inconsistent with the rules and inconsistent with how the Office treats analogous requests. 37CFR1.136(a)(2) states in part: "The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee." The date on which our petition and authorization was filed was Sept 6, 2000, and 37CFR1.136(a)(2) requires that that be the date the Office use for the purposes of determining the period of extension and the corresponding amount of the fee.

The Director's proposed policy would assign to a single paper one filing date (Sept 5) for the purpose of determining an extension fee and a second filing date (Sept 6) for purpose of holding the application abandoned. I believe the Director's proposed policy is both inherently inconsistent and misguidedly punitive. Furthermore, I maintain that the Director's proposed policy is inconsistent with the way the Office treats analogous good faith fee deficiencies, such as good faith but erroneous small entity fee payments.

The Commissioner is authorized to charge our deposit account any necessary fees (small entity).

Respectfully submitted,
SCIENCE & TECHNOLOGY LAW GROUP



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